

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.3122 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 243 OF 2023**

Abdul Karim Tajmul

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Advocate for Applicant : Mr. R. N. Chavan

Advocate for Respondent/State: Mrs. P. V. Diggikar

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 23.08.2023

PER COURT :

1. Issue notice to the respondent. Learned APP waives notice on behalf of respondent/State.
2. The applicant is accused in S.C.C. No.14/2016. He is convicted by the judgment and order dated 15/07/2022 for the offences punishable under Sections 26 (1), 26 (2) (i) (iv), 27 (3) (e) and 59 of the Food Safety and Standards Act, 2006 and sentenced to suffer R.I. for four months and directed to pay fine of Rs.90,000/- in default to suffer further R.I. for two months. Aggrieved thereby, he approached the sessions court by filing the appeal. However, the said appeal came to be dismissed. Hence, the present Revision Application.

3. The learned Advocate appearing for the applicant would submit that basically, the prosecution itself is defective and insistent with the mandate of Section 42 of Food Safety and Standards Act, 2006, which requires that the Designated Officer shall have sanction from the competent authority to initiate the prosecution. He would further submit that the courts below have misinterpreted the aforesaid provisions and convicted the applicant / accused.
4. The learned APP opposes the prayer on the ground that the applicant has not surrendered after dismissal of the appeal, hence his prayer for suspension of sentence may not be entertained. However, he fairly concedes that, issue on this point, regarding power of revisional court to entertain the prayer for suspension of sentence without surrender by accused is pending before Division Bench.
5. Having considered the submissions advanced, apparently, the legal issue is raised for consideration in this revision application, which requires consideration on merit apart from other grounds raised in the revision application. In that view of the matter, the following order:

ORDER

- (i) Criminal Application is allowed.
- (ii) Pending hearing and final disposal of revision application, substantive sentence imposed under the order passed by the Judicial Magistrate, First Class, Umri, in SCC No.14/2016 dated

15/07/2022 is suspended. The applicant / accused be released on bail on executing P.B. and S.B. of Rs.25,000/- [Rupees Twenty Five Thousand only].

(iii) Bail be furnished before the trial court.

(iv) Criminal Application is disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer